

DIVISION OF ALCOHOL AND TOBACCO CONTROL

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INDUSTRY CIRCULAR

Retailer-Packaged Alcohol (A.K.A. "To-Go Drinks") under Section 311.202

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Since Section 311.202, RSMo, went into law in August of 2021, the Division has received several questions about retailer-packaged alcohol. The Division would like to clarify its position and issue the following guidelines.

Retailers must comply with 311.202, RSMo, before selling to-go drinks.

Under [Section 311.200, RSMo](#), the Division of Alcohol and Tobacco Control may issue various retail by the drink licenses for on-premises consumption. [Section 311.202, RSMo](#), authorizes any person holding a retail by the drink license to sell retailer-packaged alcohol for off-premises consumption, commonly referred to as "to-go drinks," subject to various conditions. Licensees cannot sell retailer-packaged alcohol until all of the requirements in Section 311.202, RSMo, have been satisfied. Retailers who sell retailer-packaged alcohol or expose such for sale before meeting the requirements in Section 311.202, RSMo, could expose themselves to administrative and criminal liability.

Retailers must follow all applicable state and local health guidelines when packaging retailer-packaged alcohol.

State regulation 11 CSR 70-2.120(1) requires all retailers to maintain clean and sanitary premises that comply with state and local sanitation laws. Additionally, this regulation requires all retail by the drink licensees who prepare or pour intoxicating liquor to complete a health inspection and provide a copy of the completed health inspection to the Division. All retailers who package retailer-packaged alcohol under Section 311.202, RSMo, must maintain a clean and sanitary premise and provide a completed health inspection to the Division. Failure to do so could result in administrative discipline.

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Retailers should not pre-package retailer-packaged alcohol prior to receiving an order for the meal and beverage.

Retailers can prepare or pre-mix batches of intoxicating liquor to sell under Section 311.200, RSMo. However, retailers should not pre-package intoxicating liquor in individual tamperproof containers to sell under Section 311.202, RSMo, until they have received a corresponding to-go order for food prepared on the licensed premises, to be consumed off-premises. A meal for consumption off-premises must be ordered at the same time as the “to-go drink(s)”; patrons who dine at the establishment cannot purchase retailer-packaged alcohol on their way out of the establishment, unless they also purchase another meal for consumption off-premises.

Retailers must not use original package containers for retailer-packaged alcohol.

Section 311.202, RSMo, gives retailers great discretion when choosing what containers to use for retailer-packaged alcohol. However, retailers cannot use any containers originally used by a manufacturer of intoxicating liquor. [Section 311.550.4, RSMo](#), forbids licensees from refilling containers used by a manufacturer to package and distribute spirituous liquors, and requires licensees to destroy any such container once the container is empty. Similarly, state regulation 11 CSR 70-2.130(6) prohibits, in part, retailers from bottling any intoxicating liquor from any barrel or other container or refilling any bottle.

Retailers should not use Styrofoam™ containers for retailer-packaged alcohol.

Section 311.202.1(1), RSMo, requires all containers for retailer-packaged alcohol to be “rigid, durable, leakproof, sealable, and designed to prevent consumption without the removal of the tamperproof cap or seal.” Qualifying containers for retailer-packaged alcohol must meet all of these requirements. Retailers should not use typical Styrofoam™ containers because they are not generally rigid or durable. Styrofoam™ and other similar non-conforming containers are not compliant with the statute.

Retailers must not use lids with pre-cut or pre-perforated openings for straws.

Section 311.202.1(1), RSMo, requires all containers for retailer-packaged alcohol to be sealable. This statute expressly states that “A sealable container does not include a container with sipping holes or openings for straws.” Containers that utilize lids with pre-cut or pre-perforated openings are not sealable. Moreover, covering these holes with tape does not make these lids sealable, since the container would still include built-in “sipping holes or openings for straws.”

We appreciate the commitment from our licensees to follow all applicable state laws and regulations. While this circular addresses some of the major questions surrounding retailer-packaged alcohol, Section 311.202, RSMo, contains several other restrictions and requirements that are not addressed in this circular. Please review Section 311.202, RSMo, in its entirety before offering retailer-packaged alcohol at your establishment. If you have questions specific to the content of this circular, please contact your ATC district office. For a full directory, please visit the [Contact Us](#) page on our website.